IN THE

Supreme Court of the United States

WILLIAM S. TAYLOR ET AL., PLAINTIFFS IN ERROR,

vs.

J. C. W. BECKHAM, DEFENDANT IN ERROR.

Reply Brief for Plaintiffs in Error.

I.

Mr. Maxwell, for defendant in error, argues that Taylor cannot claim to have been "deprived" of his office without due process of law, because he does not show that he ever had it.

By the same argument, if a man were in possession of a tract of land under a record title which seemed on its face to be valid, and he should be sued for the land, and on the trial the court should proceed arbitrarily, "contrary to the established principles of private right and distributive justice," should deny him a hearing, should hold a secret trial, of which he had no notice, and, without hearing any evidence to support plaintiff's claim, though denied, should enter a judgment against defendant for the land, the defendant could not prosecute a writ of error to reverse such a judgment on the ground that his property had been taken without due process of law, because

he had not established his title to the property of which he was in possession.

Defendant in the case at bar showed he had received the certificate of election; that he had been inducted into the office; that he was lawfully in possession thereof, claiming the right to it, and enjoying the emoluments thereof when this alleged adjudication took place; and but for that "adjudication" his right now would be undisputed, though it would rest on precisely the same basis—without any additional ratification or confirmation—that supported it up to and prior to this alleged adjudication.

The Court of Appeals in its opinion herein did not mean to deny, it could not have meant to deny, the foregoing propositions, for the title which Taylor held to the office by reason of his certificate and induction into office on Dec. 12, 1899, was precisely the same as that held by every other governor of the State who preceded him. Nothing further was to be done to complete it. It was subject to the possibility of a contest, just as the title of each of them had been, a contest that might or might not be made, according to the determination of his opponent; but that contest must be by due process of law.

We submit that a person thus in possession of an office, exercising its functions and enjoying its honors and emoluments under an admittedly *prima facie* valid title, has such a right as he cannot be "deprived" of without due process of law; and as to whether or not he had such right this court, on the admitted facts, will judge for itself, exactly as it determines for itself the existence or non-existence of a contract, when a claim is made that an act of a State legislature has impaired its obligation.

But, again, consider the case from its other standpoint, that of the rights of *the people* here involved. If it be claimed that Taylor has not shown that he had the office of which he claims to have been deprived, can there be any doubt that the people had the right to vote, the right to say

who their representative in the governor's chair should be? Yet this is a right of which they will be deprived if this edict of the legislature be enforced, whereby that body, arbitrarily and without evidence of the choice of the people, declared William Goebel governor, thus attempting to choose a governor for the people instead of deciding the question as to whom they had chosen.

II.

Mr. Maxwell asked, in substance, the question—we do not recall his exact words—what would have been the effect if the constitution of Kentucky had expressly said that the legislature should decide the contest, and its decision should not be subject to review by the courts?

We submit that such a provision would simply be interpreted to mean that it should not be subject to review by proceedings in the nature of an appeal, where the court might be asked to review and reverse the findings or decisions of the legislature when proceeding lawfully, *according to due process of law*, in the exercise of its jurisdiction; but it would not be interpreted to vest in that body the absolute, arbitrary power to do as it might please, free from judicial inquiry as to whether or not its proceeding had been according to due process of law.

Of course the people might by their constitution vest in the General Assembly the power to choose a governor, as the electoral college chooses a President; but the Court of Appeals does not decide that it has done that. It decides that it has only vested in the Assembly the power to *try a contest*, "a question," says the court, "requiring evidence for its proper determination" (Rec. 1, p. 151). And then, having thus defined the power of the Assembly, the court simply holds that no judicial inquiry can be had as to whether or not this trial was by due process of law; thus denying that these limitations of power can be enforced by

judicial process to protect the rights of the parties in interest "against the violence of public agents transcending the limits of lawful authority." (See Hurtado *vs.* California, 110 U. S., 536.)

III.

In this connection counsel referred to the Arkansas Governorship case and Judge Cooley's comments on it, viz., Baxter *vs.* Brooks, 29 Ark., 182. But it does not appear from that case that the action of the senate on the contest there involved was attacked on any such grounds as are the basis of the attack on the "adjudication" now pleaded. For all that appears, there was simply an attempt to have the court review and reverse the findings of the senate.

IV.

It was stated again and again in oral argument that defendant's whole case is based on the charge of *fraud* in the General Assembly. A simple reading of the answer and our briefs will show that this is only *one* of the charges, and one upon which least stress is laid.

V.

Wilson *vs.* North Carolina, 169 U. S., was, as we said in our brief, simply a case where the statute provided that in case of certain charges being made against a public official the governor might, *without* a *hearing or trial*, suspend him until there could be a trial. That is like the case of an appointment subject to the absolute power of revocation or discharge of the official by some other official, as in Parsons *vs.* U. S., 167 U. S., 324.

The case at bar is no such case.

VI.

Tameling *vs.* U. S. Freehold Company, 93 U. S., 644, did not involve a decision by Congress on a *disputed land claim*, as counsel seemed to think. A reading of the statement of the facts of the case will show it was simply a case where Congress under a statute simply confirmed a land claim after the acquisition of New Mexico, under a grant from the old Mexican government, which was reported by the surveyor General as regular and valid. At that time there was no dispute over the claim. Subsequently the owner of the claim brought suit against some one who had taken possession, but who does not appear to have claimed a title antedating this confirmation of plaintiff's Mexican title. The simple question was the validity of that act of confirmation, which was in no sense a determination by Congress of a disputed claim between two contestants.

VII.

So the case of United States *vs.* Des Moines Company, 124 U. S., 544, was simply the case of a land grant by a State.

We have not been able to find any case, nor have the diligent counsel for defendant in error, where it has been held that any decision, whether by a court or some specially constituted tribunal, such as the one now under consideration, when passing on *a contested claim of existing right between two rival claimants*, was immune from the judicial inquiry as to whether or not it was pursuant to due process of law; and we do not believe any such case exists.

VIII.

Brief allusion has been made to the alleged "ratification" on February 20 of the previous "adjudication" of February

2. What is meant by the ratification of an adjudication we do not know. Either the action of February 2 was a trial and judgment or it was not. If it was, it needed no ratification. If it was not, then it could not be ratified. A mistrial cannot be ratified and thus made a trial. Each act was wholly separate, and must stand or fall alone. It was the action of February 2 which the court held to be the adjudication which it enforced.

At the meeting of February 20 there was no pretense of a *trial*. There was no notice to anybody that the matter would be taken up again that day. It had been claimed for weeks that the matter was settled, and that Beckham was governor. Moreover, the assembly still had no evidence before it and did not pretend to consider any on that day. There was no element of a "trial" about it. It was simply what it purported to be, viz., a political attempt to "ratify" an alleged judgment, which is a legal impossibility.

IX.

In one of the briefs filed for defendant in error reference is made to what is called a finding of fact by the State court, and which is said not to be reviewable here. It must be remembered, however, that this so-called finding of fact was after the court had sustained a demurrer to the answer which had been directed against this alleged fact, and on which ruling the questions discussed by us really arise. The demurrer having been sustained to the answer, of course nothing remained except to find the facts as alleged in the petition.

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Helm Bruce,
For Plaintiffs in Error.